Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1998

MARY G. KERGER,
Petitioner,

v.

BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502, County of DuPage and State of Illinois, a/k/a COLLEGE OF DUPAGE
Respondent.

On Petition For A Writ of Certiorari To The Illinois Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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32 pp

Questions Presented For Review
[Rule 14(1.)(a)]

Did the Illinois Supreme Court Err in Determining Petitioner Mary G. Kerger was not denied her constitutional right to procedural due process of law during and within the adjudicatory process by the Illinois Appellate Court where:

1) the Opinions of the Illinois Appellate Court manifested clear and blatant bias against her;

2) the Illinois Appellate Court imposed, in direct violation of the Illinois Supreme Court rule regulating and restricting imposition of sanctions by such rule's requirement of prior notice and opportunity to respond, the sanction of striking the text of the controlling substantive teacher tenure statute;

3) the Illinois Appellate Court repeatedly refused to address or even mention the controlling substantive teacher tenure statute in affirming the trial court's denial of teacher tenure rights?

List of All Parties
[Rule 14(1.)(b)]

The caption contains the names of all parties.

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110 ILCS 805/Article 3B

Illinois Supreme Court Rule 352(a)

Illinois Supreme Court Rule 375(a)

Illinois Supreme Court Rule 317

Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed. 2d 515 (1971)

Veillon v. Exploration Services, Inc., 876 F.2d 1197 (Fifth Cir. 1989)

Barrett v. County of Cook, 388 Ill. 251, 57 N.E.2d 873 (1944)

Resolution Trust Corp. v. Dabney, 73 F.3d 262 (Tenth Cir. 1995)

Sakon v. Andreo, 119 F.3d 109 (Second Cir. 1997)

1488, Inc. v. Philsec Invest Corp., 939 F.2d 1281 (Fifth Cir. 1991)

In Re Murchison, 349 U.S. 133 at 136, 75 S.Ct. 623 at 625, 99 L.Ed. 942 (1955)

Neblett v. Carpenter, 305 U.S. 297, 83 L.Ed. 182, 59 S.Ct. 170, reh.den., 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 355 (1938)

Watts v. Thompson, 111 F.3d 220 (Seventh Cir. 1997)

In re Korte, 193 Ill.App.3d 243, 549 N.E.2d 906, 140 Ill.Dec. 255 (Fourth District 1990)

Hultberg v. Anderson, 252 Ill.607, 97 N.E. 216 (1911)

Illinois Supreme Court Rule 63C

Citations of the Official and Unofficial Reports of the Opinions and Orders Entered in the Case [Rule 14(1.)(d)]

1) Substitute Opinion of the Illinois Appellate Court: 295 Ill.App.3d 272, 229 Ill.Dec. 706, 692 N.E.2d 695, 1977 Ill.App. LEXIS 829 (Second District 1997) [reproduced in Appendix at APP 20]

2) Order of the Illinois Supreme Court Denying Petition for Appeal as of Right: 178 Ill.2d 580, 1998 Ill. LEXIS 632 (1998) [reproduced in Appendix at APP 1]

Concise Statement of Basis
For Jurisdiction
[Rule 14(1.)(e)]

i) On June 3, 1998, the Illinois Supreme Court entered an Order (APP 1) denying Petitioner's Petition for Appeal as a Matter of Right based on federal constitutional grounds (or, in the alternative, for leave to appeal)

ii) Order re: Rehearing: Not Applicable

iii) Rule 12.5 Reliance: Not Applicable

iv) Jurisdiction is conferred on this Court by 28 U.S.C. §1257

v) Rule 29.4 Notifications: Not applicable

Citations to Constitution, Statutes and Illinois Supreme Court Rules [Rule 14(1.)(f)]

Note: Text of the following provisions is reproduced in the separately bound Appendix

A) Constitution of the United States, Fourteenth Amendment, Section 1

B) Illinois Statutes:

110 ILCS 805/3B-1 through 3B-6
(Public Community College Tenure Act)

C) Illinois Supreme Court Rules: Rules 63C; 317; 341; 344; 352; 375(a) and R.P.C. 8.3(b)

Concise Statement of the Case
[Rule 14(1.)(g)]

A] The Underlying Facts

Plaintiff-Appellant Mary G. Kerger was regularly employed as an instructor of Business Law courses by the Defendant College of DuPage since the fall of 1993 (C.347, ¶1)[1]. Kerger taught for Defendant on a full time basis during the regular academic years 1993/1994, 1994/1995, and 1995/1996 (C.355, ¶12; C.356, ¶13, ¶14).

On or about January 17, 1996, Defendant transmitted to Kerger a "Notice of Dismissal" (C.348, ¶6) the body of which, in its entirety, read as follows:

> Dear Mary Kerger:
>
> We regret to advise you that the Board of Trustees of Community College District No. 502, Counties of DuPage, Cook, and Will, State of Illinois, pursuant to Article IIIB of the Public

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[1]references denoted "C." are to the common law record on appeal possession of which is with the Clerk of the Circuit Court; references denoted "APP" are to the separately bound Appendix supplied with this Petition.

> Community College Act, has determined that you are to be dismissed on the last day of classes, June 11, 199[6]. Your services to the Community College District will be terminated as of the last day of classes, June 11, 199[6].(C.422)

The Notice of Dismissal was accompanied by a letter from Defendant's President stating that the giving of the notice was "a legal requirement foisted upon the board by the legislature" under "a tenure act passed by the Illinois legislature several years ago" (C.122).

On January 29, 1996, Kerger, through her counsel, requested the reasons for the decision of Defendant College to Dismiss (C.123); C.453). On February 2, 1996, Defendant issued the following response to such query:

The specific reasons for the dismissal of Mary Kerger are:

1. Mary Kerger was hired as a temporary replacement for full-time faculty members who were on leave or died.

2 The College reevaluated its ratio of students to faculty members, or full-time v. part-time positions, and addressed the

> relative strength and/or need for programs including, but not limited to, Business Law resulting in the elimination of a full-time position. (C.124; C.454)

The Defendant College also stated that it could simply "choose" to deny Plaintiff tenure for any or no reason (R.C129; C130; C492; C493).

Kerger thereby maintained that Defendant did not issue the Notice of Dismissal as a result of her performance or qualifications as a teacher or as a result of any evaluation of her performance or qualifications (C.348; C.450).

Kerger further maintained that the Defendant had not decided to decrease under Section 3B-5 of the Tenure Act (110 ILCS 805/3B-1, et.seq.), as of the beginning of 1996/1997 academic year, the number of Faculty Members (within the meaning of 110 ILCS 805/3B-1) employed by it from the level existing either at January 17, 1996, or at the close of the 1995/1996 academic year (Amended Complaint, ¶13 at C.264)

Kerger also maintained that the Defendant had not decided to decrease, under Section 3B-5 of the Tenure Act, the number of Faculty Members on account of any "discontinuance of a particular type of teaching

service or program" (Amended Complaint, ¶14 at C.265).

The record contained no indication that Kerger ever received a "statement of honorable dismissal" described in 110 ILCS 805/3B-5; Kerger instead charged that she had not received any proper notice of dismissal under any provision of Article IIIB of 110 ILCS 805 (Amended Complaint, Count III ¶10 at C.269), specifically claiming not to have received the "statement of honorable dismissal" described in 110 ILCS 805/3B-5 (Stipulation, Exhibit B, p.35, lines 1-7).

B] The Essential Litigation History

1] In the Circuit Court--

Kerger filed her Amended Complaint (C.347) pursuant to leave of court on September 3, 1996, (C.347-C.422) seeking declaratory relief concerning her substantive rights under 110 ILCS 805/3B-3 to reemployment and to tenure.

The Amended Complaint (C.347) set forth, as the basis of Plaintiff's claims, §3B-3 contained within the Tenure Article of the Public Community College Act (110 ILCS 805/Article 3B) which reads with emphasis added as follows:

> Sec.3B-3. *Dismissal of Non-tenure Faculty Member*. Every Board shall provide by rule or contract for a procedure to evaluate the performance and qualifications of non-tenure faculty members. If the implementation of such procedure results in a decision to dismiss a non-tenure faculty member for the ensuing school year or term, the Board shall give notice thereof to the faculty member not later than 60 days before the end of the school year or term. The specific reasons for the dismissal shall be confidential but shall be issued to the teacher upon request. If the Board fails to give such notice, within the time period, the faculty member shall be deemed reemployed for the ensuing school year. If the board fails to give such notice within the time provided during the third year, or during the fourth year in the case of a one year extension, the faculty member shall enter upon tenure during the ensuing school year or term. (emph. added)

Counts I and III sought declaratory relief as to her statutory right to reemployment under the penultimate sentence of 110 ILCS 805/3B-3, with Count I alleging invalid grounds for dismissal and Count III alleging improper notice. Counts II and IV sought declaratory relief as to her statutory right to

tenure under the last sentence of 110 ILCS 505/3B-3, with Count II alleging invalid grounds for dismissal and Count IV alleging improper notice. Plaintiff's Amended Complaint specifically alleges that she was not dismissed as a non-tenured faculty member on account of any deficiencies in performance or qualifications (Counts I and II, ¶7) and that no notice of dismissal under either 110 ILCS 805/3B-3 or 110 ILCS 805/3B-5 of the Public Community College Act was issued to her (Counts III and IV, ¶10).

On September 17, 1996, Defendant filed a motion to dismiss (C.425) the Amended Complaint specifically alleging that Defendant had complied with §3B-3 (C.429) including specifically the giving of a §3B-3 Notice of Dismissal and also claiming that the Defendant Board had, notwithstanding enactment of Sections 3B-2, 3B-3 and 3B-5 of the Tenure Act, retained "unlimited authority" (C.431) to terminate the employment of a non-tenured faculty member. After briefing and oral argument (Illinois Supreme Court Rule 323 Stipulation[2], Exh. B) by the parties (C.426ff; C.439ff), the Circuit Court, on September 26, 1996, granted the motion to dismiss the amended complaint

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[2]Rule 323 permits the parties to stipulate to the use on appeal of reports of proceedings (i.e., court reporter transcripts) without trial judge certification.

(C.438).

The trial court agreed with Plaintiff's position that no §3B-3 notice of dismissal had been given to Plaintiff by Defendant because the Defendant's use of the performance and qualifications evaluation procedure had not "resulted" in either a decision to dismiss or issuance of a dismissal notice based thereon (Illinois Supreme Court Rule 323 Stipulation, Exhibit B, pages 18, 19 at lines 12-19; 29 at lines 22, 23). However, the trial court ruled that the Defendant College retained unlimited discretion to terminate non-tenured Faculty Members "in areas not covered by the statute." (Illinois Supreme Court Rule 323 Stipulation Exh.B, pp. 42-44). The trial court did not address the immediately preceding statutory section, §3B-2 which provided in relevant part as follows:

> Any faculty member who has been employed in any district for a period of 3 consecutive years shall enter upon tenure unless dismissed as hereinafter provided. (emphasis added)

2] In the Illinois Appellate Court, Second District--

The Appellate Court first set the case for oral argument but then dispensed with it, expressly referring to Illinois Supreme Court Rule 352(a) (APP 3). The Court granted a Motion to add Supplemental Authority.

On October 17, 1997, the Court issued its initial Opinion (APP 4) which agreed with Defendant that it had complied with Section 3B-3 of the Act and that it had unlimited common law power to dismiss a non-tenured Faculty Member for any or no reason. The Opinion struck whole portions of Plaintiff's brief including the key statutory text of §3B-2 of the Tenure Act and, in affirming the Circuit Court, stated that Plaintiff's arguments were "enigmatic" (APP 8). The Opinion also lashed out at Plaintiff's counsel, an experienced appellate advocate (APP 70), for using three footnotes (APP 68) containing argument in a brief of some 60 pages.

On November 7, 1997, Plaintiff Kerger filed separately her first Petition for Rehearing and "R.P.C. 8.3(b) Report of Violation of Code of Judicial Conduct Raising Question of Fitness for Office and Illinois Supreme Court Rule 361 and 63C Motion to Disqualify" (APP 64). The Petition for Rehearing pointed out the Appellate Court's refusal to address three items: 1) the text of Section 3B-3 of the Tenure Act; 2) the text of Section 3B-2 of the Tenure Act; and 3) the text of Supreme Court Rule 375(a). The aforementioned Report of Violation not only sought to disqualify Appellate Justice Susan Hutchinson from further participation in the proceeding on account of demonstrated bias on the face of the Opinion she had authored, but also reported the alleged judicial miscon-

duct to the Judicial Inquiry Board as required by Illinois Rule of Professional Conduct 8.3(b).

On December 4, 1997, the Illinois Appellate Court, with Justice Hutchinson still participating, entered, without explanation or comment, orders (APP 18) denying both the Petition for Rehearing and the Motion to Disqualify Justice Hutchinson from further participation and substituting an Opinion (APP 20) dated December 4, 1997, for the one which had been filed on October 17. At page 7 of the second Opinion, the Appellate Court did a complete about face on one of the three points raised in the Petition for Rehearing pertaining to a key issue in the case, namely Defendant's non-compliance with the text of Section 3B-3 of the Tenure Act. To wit, the Appellate Court now embraced Plaintiff's argument concerning Defendant's non-compliance with Section 3B-3 (which argument the Appellate Court had previously derogatorily labeled in its first Opinion as "enigmatic") and now instead labeled Defendant's position, which the first Opinion had previously accepted, as "absurd." Nonetheless, the Appellate Court refused to consider or address the other two points, namely the text of Section 3B-2 of the Tenure Act and the text of Rule 375(a) and so refused to reverse the Circuit Court's dismissal or remove the

imposition of sanctions.

Therefore, on December 18, 1997, Plaintiff Kerger filed a Second Petition for Rehearing, this one directed against the December 4 Opinion. This Petition was subsequently denied (APP 33).

3] In the Illinois Supreme Court

On February 25, 1998, Petitioner filed her Illinois Supreme Court Rule 317 Petition for Appeal As A Matter of Right (or, in the alternative, for Leave to Appeal) with the Illinois Supreme Court. Such filing was timely under the Illinois Supreme Court's Order of January 9, 1998 (A-13). Illinois Supreme Court Rule 317 provides that appeals from the Illinois Appellate Court shall lie to the Illinois Supreme Court as a matter of right in cases in which a question under the Constitution of the United States arises for the first time in and as a result of action of the Illinois Appellate Court. The Rule 317 Petition specifically charged that the Illinois Appellate Court violated the federal (and Illinois) constitutional requirement of due process of law specifically applicable to the adjudicatory process by:

- imposing sanctions, which included striking from Petitioner's Brief the text of the controlling Illinois statute, without notice and

opportunity to be heard and which imposition also violated the controlling court rule namely Illinois Supreme Court Rule 375(a) expressly containing such requirements.

- allowing an appellate judge to continue to participate in the adjudication after demonstrating palpable bias and partiality against petitioner and her counsel in the following ways:

  a] striking key statutory texts (APP 9) used in the Statutes Involved section of Plaintiff-Appellant's Brief-in-chief reproduced without reduction in size directly from Michie's *Illinois Compiled Statutes Annotated*;

  b] striking (APP 9) other portions of the brief-in-chief of Plaintiff-Appellant as a sanction for that brief's use of a total of three argumentative footnotes (APP 68) in a brief 61 pages long while not sanctioning Defendant-Appellee for using five argumentative footnotes in its much shorter brief (APP 68), one footnote of which was improperly used in the Statement of Facts;

c] criticizing and sanctioning Plaintiff's attorney for using a variety of type sizes, fonts and formats (APP 8) without criticizing Appellee's counsel who likewise used a variety of type size, fonts, and formats, including minuscule sized footnotes;

d] criticizing Plaintiff's attorney for making "enigmatic arguments" (APP 8) without setting forth any reasoning or basis for the charge;

e] falsely accusing Plaintiff's attorney of presenting statutory texts in "greatly reduced, dual-column format" (APP 8) when there was not one instance of such practice;

f] accusing Plaintiff's attorney of "annoying" the Court (APP 8) by use of three argumentative footnotes in a brief over 60 pages long when Defendant's counsel used, without annoying the court, five argumentative footnotes in the Defendant's brief (APP 68).

g] publicly and falsely accusing Plaintiff's counsel of violating the Illinois Supreme Court Rule 341(a) 75 page limit on briefs (APP 8) when the brief was only 61 pages in length (APP 71) and, after being challenged (APP 71), wilfully persisted in such false accusation in the substituted Opinion (APP 24) with no analysis or basis in fact whatsoever.

On June 3, 1998, the Illinois Supreme Court denied the Rule 317 Petition for Appeal As a Matter of Right without comment, thereby refusing to entertain the appeal (APP 1).

Direct and Concise Argument Amplifying Reasons
Relied on For Allowance of the Writ
[Rule 14(1.)(h)]

Summary Statement

The denial by the Illinois Supreme Court of Petitioner's Illinois Supreme Court Rule 317 Petition for Leave to Appeal As a Matter of Right decided an important federal question in a way that conflicts with relevant decisions both of this Court (Rule 10(c)) and of the United States Courts of Appeal (Rule 10(b)). This Court and lower federal courts have long held that the Fourteenth Amendment's guaranty of due process of law within the adjudicatory process itself is denied a litigant where the state judicial officer(s) manifest actual bias or even the appearance of bias and where notice and opportunity to be heard are not afforded prior to the imposition of judicial sanctions.

In the instant case, the Illinois Supreme Court, by its threshold denial of Petitioner's Petition for Appeal as of Right based on constitutional grounds, determined, contrary to federal judicial precedents, that the presence of bias within, and the imposition of sanctions without notice and an opportunity to be heard by, the Illinois Appellate Court did not constitute denials of due process of law. Such denial was not a discretionary act by the Illinois Supreme Court because Illinois Supreme Court Rule 317 confers an absolute right of appeal where a

constitutional violation by the Illinois Appellate Court is committed by that court. In denying the Rule 317 Petition, the Illinois Supreme Court necessarily found no constitutional violation had been committed by the Illinois Appellate Court despite the existence of bias and the unconstitutional imposition of sanctions. Petitioner has thus been denied by the judiciary of her own State of Illinois the fair adjudicative procedure guaranteed by the 14th Amendment to the U.S. Constitution.

A] Imposition of Sanctions by the Appellate Court Violated of Due Process of Law

The most basic, fundamental and essential elements of procedural due process are fair notice and an opportunity to be heard (Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed. 2d 515 (1971); Veillon v. Exploration Services, Inc., 876 F.2d 1197 (Fifth Cir. 1989); Barrett v. County of Cook, 388 Ill 251, 57 N.E.2d 873 (1944)). These constitutional requirements are embodied in Illinois Supreme Court Rule 375(a) in the context of governing imposition of sanctions by an Appellate Court panel for alleged violations of civil appeal rules. In the instant case, the Appellate Court imposed sanctions without notice and without opportunity to cure or otherwise respond, a clear violation of Rule 375 and the due process requirements which it incorporates. Specifically, the Appellate Court, without motion of the adverse party and without warning to Petitioner or her appellate

counsel, struck and failed to mention key statutory texts, which texts (particularly, 110 ILCS 5/3B-2, first sentence) were key authorities for Kerger's arguments. Where sanctions are imposed without notice and opportunity to respond, due process protections are violated (Resolution Trust Corp. v. Dabney, 73 F.3d 262 (Tenth Cir. 1995); Sakon v. Andreo, 119 F.3d 109 (Second Cir. 1997); 1488, Inc. v. Philsec Invest Corp., 939 F.2d 1281 (Fifth Cir. 1991)).

B] The Appellate Court Panel Demonstrated Bias Against Kerger Thereby Depriving Her of Her Constitutional Rights to a Fair Hearing

It has long been held that the constitutional right to due process of law is denied where a court is either biased or even merely presents the appearance of bias against the party or his attorney. (In Re Murchison, 349 U.S. 133 at 136, 75 S.Ct. 623 at 625, 99 L.Ed. 942 (1955)). The initial Opinion of the Appellate Court (APP 4) demonstrated actual and/or apparent bias against Plaintiff or her counsel by taking the actions set forth in detail herein.

The only explanation for the demonstrated bias is one rooted in a political philosophy of hostility towards tenure

legislation of the Illinois General Assembly and prejudice against anyone claiming the protections of such statutes.

C] The Appellate Court Refused to Acknowledge and/or Address Arguments and Authorities on the Merits, Thereby Denying Due Process

It has also long been held that mere judicial error in construing, interpreting and/or applying statutory authorities gives rise to no due process violation (Neblett v. Carpenter, 305 U.S. 297, 83 L.Ed. 182, 59 S.Ct. 170, reh.den., 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 355 (1938)). In addition, where a reviewing court determines that an advocate's argument is wholly lacking in merit, discussion and analysis is not required (Watts v. Thompson, 111 F.3d 220 (Seventh Cir. 1997)). However, due process of law is denied when a Court, having been properly presented with the plain text of a statutory authority, deliberately refuses to consider and address it at all (In re Korte, 193 Ill.App.3d 243, 549 N.E.2d 906, 140 Ill.Dec. 255 (Fourth District 1990)). Similarly, due process of law is denied when judgment is pronounced by a Court without any judicial determination of the facts which alone can support such judgment. In such case, the court's

judgment is merely the arbitrary edict of the judge and violates due process requirements (Hultberg v. Anderson, 252 Ill. 607, 97 N.E. 216 (1911)). Here, the Illinois Appellate Court committed and knowingly persisted in committing not just one but rather three distinct violations:

i] **Deliberate Refusal to Address Supreme Court Rule 375(a)**

Upon receipt of the initial Opinion (APP 4), Plaintiff-Appellant in her first Petition for Rehearing and her companion R.P.C. 8.3(b) Report of Violation of Code of Judicial Conduct (APP 64) pointed out the three-fold requirements of Rule 375(a) for the imposition of sanctions on account of alleged violations of civil appeal rules:

- prior notice
- opportunity to cure or otherwise respond
- a finding of wilfulness

The Appellate Court denied the Petition for Rehearing without explanation (APP 18), withdrew its initial Opinion (APP

18) and issued a substitute Opinion (APP 20) which broadened the sanction, without ever providing an opportunity to cure and without ever making a wilful finding. In fact, the Appellate Court repeatedly refused to address the text of Rule 375(a), after being challenged in the petitions for rehearing (see APP 79). Such arbitrary and capricious use of judicial power which deliberately refused to address Rule 375(a)'s three-fold requirements violated the constitutional standards expressed in Korte and Hultberg.

ii] **Deliberate Refusal to Address Illinois S.Ct. Rule 63C**

Upon receipt of the initial Opinion, Plaintiff-Appellant moved to disqualify Justice Hutchinson as author of the initial Opinion from further participation in the case on the basis of actual or apparent bias (APP 64). Without explanation or comment, including a complete failure to address Illinois Supreme Court Rule 63C, the Court, with Justice Hutchinson participating, denied the motion. The

Appellate Court instead tried to mask its actual or apparent bias manifested against Plaintiff and/or her counsel in the initial Opinion by editing out the most antagonistic and deprecatory comments (compare initial Opinion (APP 4) to substitute Opinion (APP 20)).

iii] **Deliberate Refusal to Consider Controlling Statute (110 ILCS 5/3B-2, first sentence)**

Plaintiff/Appellant Kerger argued throughout the litigation that two sections of the Tenure Act (110 ILCS 5/3B-3 and 3B-5) provided the exclusive grounds and means for dismissing full-time non-tenured Public Community College faculty members regularly engaged in teaching. The Defendant College argued and the trial court held that the Tenure Act did not take away the common law bases for dismissal (i.e., that unlimited common law grounds for dismissal somehow co-existed with Tenure Act restrictions on dismissal). Plaintiff/Appellant submitted as one of her specific authorities for her

argument the first sentence of 110 ILCS 5/3B-2 which reads:

> Any faculty member who has been employed in any district for a period of 3 consecutive years shall enter tenure unless dismissed as hereinafter provided. (emphasis added)

The last clause evidences the Illinois General Assembly's clear intent to supplant common law bases for dismissal. Both Opinions of the Illinois Appellate Court (APP 4; APP 20) struck, as a sanction, the text of this statute from Appellant's Brief and refused to analyze or even mention this statute or its text. The Illinois Appellate Court's Opinions instead state without analysis of the statutory text that it was unclear "whether the legislature intended to supplement or replace the common law with this enactment." (APP 12; APP 28) It was absolutely preposterous for the Illinois Appellate Court to improperly strike and refuse to address the key authoritative statutory text which demonstrated the patent error of the Defendant College and of the Circuit

and Appellate Courts in their expressed view that unlimited common law power to dismiss excellently performing faculty members survived enactment of, and co-exists in some unexplained way with, the Tenure Act protections of Section 3B-3 thereof.

In Part I of Plaintiff/Appellant's initial Petition for Rehearing, the Appellate Court's failure to consider this very text, namely, the first sentence of 110 ILCS 5/3B-2, was specifically pointed out. The Petition was denied without comment, thereby further manifesting the Illinois Appellate Court's wilful choice to rule by fiat through express refusal to consider or address relevant statutory texts brought to its attention and in contravention of the requirements of due process as articulated by Korte and Hultberg.

Prayer

Wherefore, Petitioner Mary G. Kerger prays that his Honorable Court grant this petition for writ of certiorari and set the case for briefing and oral argument.

Respectfully submitted,

By: Mary G. Kerger
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